

Disciplinary and Other NASD Actions

REPORTED FOR FEBRUARY

NASD® has taken disciplinary actions against the following firms and individuals for violations of NASD rules; federal securities laws, rules, and regulations; and the rules of the Municipal Securities Rulemaking Board (MSRB). The information relating to matters contained in this *Notice* is current as of the end of January 2003.

Firm and Individual Sanctioned

Security Capital Trading, Inc. n/k/a Vertical Capital Partners, Inc. (CRD #35909, New York, New York) and Ronald Mark Heineman (CRD #241924, Registered Principal, Fair Field, New Jersey) submitted an Offer of Settlement in which the firm was fined \$75,000 and suspended from participating in any firm commitment underwritings in any underwriting capacity for six months, and suspended thereafter for an additional 18 months from participating in any firm commitment underwritings as a lead managing underwriter. In light of the firm's payment of \$50,000 in a settlement, the fine was reduced to \$25,000. Heineman was fined \$50,000 and suspended from association with any NASD member in any capacity for two months. The fines imposed reflect the financial status of the firm and Heineman. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm executed an underwriting "letter of intent" in which it agreed to underwrite an initial public offering (IPO) "on a firm commitment basis." The firm, acting through Heineman, terminated the issuer's firm commitment offering without justification after four days of aftermarket trading and requested that NASDAQ cancel all trades. The termination affected over 500 members and their clearing agents, and public customers whose trades had to be unwound and canceled. In addition, the issuer failed to receive the \$10.98 million (less fees and discounts) in proceeds it was entitled to receive under the firm commitment underwriting agreement.

The firm's suspension from participating in any firm commitment underwritings in any underwriting capacity began January 21, 2003, and will conclude July 20, 2003. The firm's suspension from participating in any firm commitment underwriting as a lead managing underwriter will begin July 21, 2003, and will conclude at the close of business January 20, 2005. Heineman's suspension began January 21, 2003, and will conclude at the close of business March 20, 2003. (NASD Case #CAF020032)

Firms Fined, Individuals Sanctioned

Laidlaw Global Securities, Inc. (CRD #19018, New York, New York) and Philip Roger Howard Connor, III (CRD #1579819, Registered Principal, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$50,000. Connor was fined \$25,000 and suspended from association with any NASD member in any capacity for three weeks. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm and Connor sold securities of Laidlaw's parent company without a registration statement, and that the firm executed solicited sales of unregistered, restricted Rule 144 stock. The findings also stated that the firm failed to file public offerings with NASD's Corporate Finance Department, and to meet other substantive requirements when it sold securities from its principal accounts.

Connor's suspension began February 3, 2003, and will conclude at the close of business February 21, 2003. (NASD Case #CAF020070)

Pacific On-Line Trading and Securities, Inc. (CRD #45737, San Jose, California) and Timothy Alan McAdams (CRD #2877024, Registered Principal, San Jose, California) were censured and fined \$22,500, jointly and severally, and McAdams was required to requalify as a general securities principal. The National Adjudicatory Council (NAC) modified the sanctions following appeal of an Officer of Hearing Officers (OHO) decision. The sanctions were based on findings that the firm, acting through McAdams, maintained a Web site advertisement without filing the site with NASD. The findings also stated that the firm, acting through McAdams, used a Web site that was false and misleading because it omitted material information concerning the risks of day trading and contained exaggerated, unwarranted, and false statements.

The firm and McAdams have appealed this action to the Securities and Exchange Commission (SEC), and the sanctions are not in effect pending consideration of the appeal. (NASD Case #C01000037)

Firms and Individuals Fined

Glen Rauch Securities, Inc. (CRD #17843, New York, New York) and Dennis Young (CRD #2070952, Registered Principal, Forest Hills, New York) submitted a Letter of Acceptance, Waiver, and Consent in which they were censured and fined \$10,000, jointly and severally. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Young, permitted registered representatives to act as registered persons while their registration status with NASD was inactive due to their failure to complete the

Regulatory Element of NASD's Continuing Education Requirement. (NASD Case #C10020121)

J.P.R. Capital Corporation (CRD #38056, Roslyn, New York) and Paul Jeffrey Umansky (CRD #1615489, Registered Principal, Rockville Centre, New York) submitted a Letter of Acceptance, Waiver, and Consent in which they were censured and fined \$15,000, jointly and severally. The firm was fined \$5,000, jointly and severally, with another individual, and fined \$6,500, individually. Without admitting or denying the allegations, the respondents consented to the described sanctions and to the entry of findings that the firm, acting through Umansky, failed to establish, maintain, and enforce adequate written procedures for supervising the telemarketing activities of all of the firm's registered persons as required by the Taping Rule. The findings also stated that the firm, acting through an individual, failed to report, and to report timely, statistical and summary information regarding written customer complaints. NASD also found that the firm executed short-sale transactions in NASDAQ National Market® (NNM®) securities at or below the current inside bid when the current inside bid was below the preceding inside bid in the security. (NASD Case #CLI020015)

Firms Fined

A.B. Watley, Inc. (CRD #797, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$45,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to show the time of execution on the memorandum of each purchase and sale for the firm's account. The findings also stated that the firm executed principal short sale-transactions and failed to report each of the transactions to the Automated Confirmation Transaction ServiceSM (ACTSM) with a short-sale modifier. In addition, the firm executed customer short-sale orders and failed to properly mark the customer order tickets as "short." (NASD Case #CLI020014)

Adams, Harkness & Hill, Inc. (CRD #1020, Boston, Massachusetts) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$25,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that, as a market maker in securities, it locked/crossed the market during the pre-opening period and failed to immediately thereafter send a Trade-or-Move message through SelectNet® to the market participant whose quote it locked or crossed that was priced at the receiving market participant's quoted price; and failed to send a Trade-or-Move message through SelectNet with an aggregate size of at least 5,000 shares to all market participants whose quotes it locked/crossed. The findings also stated that the firm was a party to a locked or

crossed market condition prior to the market opening; received a Trade-or-Move message in each instance through SelectNet; and, within 30 seconds of receiving such messages, failed to fill the incoming Trade-or-Move message for the full size of the message or move its bid down (offer up) by a quotation increment that would have unlocked/uncrossed the market. (NASD Case #CMS020267)

American Enterprise Investment Services Inc. (CRD #26506, Minneapolis, Minnesota) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to accept or decline in ACT transactions in eligible securities within 20 minutes after execution. (NASD Case #CMS020256)

Banca IMI Securities Corporation (CRD #19418, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$17,500, and required to revise its written supervisory procedures with respect to applicable securities laws and regulations concerning Order Audit Trail SystemSM (OATSSM) rules. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it submitted to OATS reports with respect to equity securities traded on the NASDAQ Stock Market that were not in the electronic form prescribed by NASD. NASD found that the subject reports were rejected by the OATS system and notice of such rejection was made available to the firm on the OATS Web Site, but the firm did not correct or replace the subject reports during the review period. The findings also stated that the firm failed to submit required information to OATS, and transmitted to OATS reports that contained inaccurate, incomplete, or improperly formatted data. Furthermore, NASD found that the firm failed to timely report to OATS reportable order events, and its supervisory system did not provide for supervision reasonably designed to achieve compliance with applicable securities laws and regulations concerning OATS. (NASD Case #CMS020248)

Budner Securities n/k/a Secure Trading Group, Inc. (CRD #41216, Boca Raton, Florida) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$12,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it effected short sales on a down tick at or below the current best bid for the security, failed to report short sales via the ACT system as required, and failed to mark sell order tickets as short when it executed short sales. The findings also stated that the firm entered proprietary trades into the Small Order Execution SystemSM (SOESSM) for execution against a SOES market maker. In addition, NASD found that the firm failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with the rules and regulations applicable to the

Short Sale Rule, ACT trade reporting, recordkeeping, and SOES trading. (NASD Case #C07020100)

Cardinal Capital Management, Inc. (CRD #24605, Miami, Florida) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was fined \$12,500. Without admitting or denying the allegations, the firm consented to the described sanction and to the entry of findings that it executed principal equity transactions for its own account as well as public customer accounts through its clearing firm and failed to have someone registered as an equity trader. The findings also stated that the firm failed to make filings pursuant to the customer complaint-reporting requirement, although it had an arbitration award and customer complaints that were reportable. (NASD Case #C07020101)

Clark Street Capital, Inc. (CRD #38304, Alpharetta, Georgia) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$15,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it assisted in the operation of an unregistered broker/dealer by opening and maintaining day trading brokerage accounts for public customers of the unregistered broker/dealer. The findings also stated that the firm paid commissions to the unregistered broker/dealer as income for services. (NASD Case #CAF020068)

Herzog, Heine, Geduld, LLC (CRD #2186, Jersey City, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$40,000. The firm has submitted satisfactory proof of payment of restitution, or reasonable and documented efforts undertaken to pay restitution, to its customers in connection with its handling and execution of customer orders. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that, as a market maker in securities, it executed customer market orders to sell and buy shares, and customer limit orders to buy shares. NASD found that the firm did not send any SelectNet messages, except one, to buy or sell shares from market makers or electronic communications networks (ECNs) to satisfy its customers' orders. The findings also stated that the firm failed to price-improve one customer market order to sell shares of a common stock by executing it against an undisclosed limit order to buy shares of the stock. (NASD Case #CMS020266)

Instinet Corporation (CRD #42886, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$15,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that in both print and television advertisements, it failed to disclose the basis for the savings numbers contained in the ads and how the numbers were derived. The findings also stated that the firm failed to disclose that the savings numbers were not based on actual

trades, as implied, but were derived from calculations performed by the firm based on market analysis by an outside firm not identified as the source of the analysis. In addition, NASD found that a print ad failed to establish any correlation between the rankings identified and the claimed savings. NASD also found that the ads, as presented, failed to provide a sound basis to permit the public to evaluate the facts in regards to the services offered. (NASD Case #CAF020069)

J.P.R. Capital Corporation (CRD #38056, Roslyn, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$10,000, and required to revise its written supervisory procedures with respect to the applicable securities laws and regulations concerning the OATS rules within 30 business days. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to submit required information to OATS on 44 business days. The findings also stated that the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to applicable securities laws and regulations concerning OATS rules. (NASD Case #CMS020262)

National Securities Corp. (CRD #7569, Seattle, Washington) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$32,500. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it received customer complaints that were to be disclosed on Forms U-4 (Uniform Applications for Securities Industry Registration or Transfer) and/or U-5 (Uniform Termination Notices for Security Industry Registration) of registered representatives and failed to do so. The findings also stated that the firm settled written customer complaints, which settlements were supposed to be disclosed on Forms U-4 and/or U-5 of certain registered representatives, but failed to do so. NASD also found that the firm permitted a registered person to continue to perform duties as a registered person when his registration status with NASD was inactive due to his failure to complete the Regulatory Element of NASD's Continuing Education Requirements. In addition, NASD found that the firm maintained a continuing education program for its covered registered persons to enhance their securities knowledge, skill, and professionalism; and, in the implementation of that program, failed to maintain an adequate system to monitor the completion of continuing education modules by its registered persons. Moreover, NASD found that the firm failed to establish, maintain, and/or enforce adequate written supervisory procedures and failed otherwise to supervise its activities to achieve compliance with applicable securities laws and regulations concerning the timely reporting of customer complaints and settlements on Forms U-4 and/or U-5, preventing registered persons from continuing to perform duties as a registered person when their registration status with NASD is inactive due to failure to complete the Regulatory Element of NASD's Continuing Education Requirements, and monitoring and documenting the completion of Firm Element of continuing

education modules by its registered persons. (NASD Case #C3B020023)

Needham & Company, Inc. (CRD #16360, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$65,000, jointly and severally, and required to pay \$915.12, plus interest, in restitution to a public customer. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it traded for its own account ahead of customer limit orders, failed to use reasonable diligence to ascertain the best inter-dealer market, failed to buy or sell in such market so that the resultant price to its customer was as favorable as possible under prevailing market conditions, and failed to execute customer limit orders. The findings also stated that the firm failed to display immediately the customer limit orders in listed securities in its public quotation, when each such order was at a price that would have improved the firm's bid or offer in each such security; or when the order was priced equal to the firm's bid or offer and the national best bid or offer in such security, and the size of the order represented more than a de minimis change in relation to the size associated with its bid or offer in each such security. In addition, NASD found that the firm failed to establish, maintain, and enforce adequate written supervisory procedures to achieve compliance with applicable securities laws and regulations concerning the Limit Order Protection/Display rules and regulations. (NASD Case #C8A020087)

ViewTrade Securities, Inc. (CRD #46987, Boca Raton, Florida) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured and fined \$10,000. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed, within 90 seconds after execution, to transmit through ACT last-sale reports of transactions in NNM, NASDAQ SmallCapSM (SCSM), and OTC Equity securities, and failed to designate through ACT OTC Equity securities last-sale reports as late. The findings also stated that the firm incorrectly designated as ".SLD" through ACT last-sale reports of transactions in OTC Equity securities reported to ACT within 90 seconds of execution, and incorrectly designated as ".PRP" through ACT last-sale reports of transactions in NNM, OTC Equity, and SC securities reported to ACT. (NASD Case #CMS020253)

Wells Fargo Investments, LLC (CRD #10582, San Francisco, California) submitted a Letter of Acceptance, Waiver, and Consent in which the firm was censured, fined \$30,000, and required to pay \$4,178.60, plus interest, in restitution to public customers. Without admitting or denying the allegations, the firm consented to the described sanctions and to the entry of findings that it failed to ensure that it used reasonable diligence to ascertain the best inter-dealer market, and that it bought or sold in such market so that the resultant price to its customer was as favorable as possible under prevailing market conditions.

The findings also stated that the firm failed to use reasonable diligence to ascertain the best inter-dealer market, and failed to buy or sell in such market so that the resultant price to its customer was as favorable as possible under prevailing market conditions. (NASD Case #CMS020258)

Individuals Barred or Suspended

Mark David Allen (CRD #1763329, Registered Principal, South Glastonbury, Connecticut) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Allen consented to the described sanction and to the entry of findings that he misappropriated \$3,455 in cash premium payments he received from clients. The findings stated that instead of applying the premium payments to the customers' auto insurance policies, Allen misappropriated the funds for his own use and benefit. (NASD Case #C11020047)

Christian Gardner Baldwin (CRD #4413418, Associated Person, Hicksville, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for three months. The fine must be paid before Baldwin reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Baldwin consented to the described sanctions and to the entry of findings that he willfully failed to disclose material facts on his Uniform Application for Securities Industry Registration or Transfer Form (Form U-4).

Baldwin's suspension began February 3, 2003, and will conclude at the close of business May 2, 2003. (NASD Case #C10020129)

Stephen Allan Blum (CRD #600373, Registered Representative, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$15,000 and suspended from association with any NASD member in any principal capacity for three months. Without admitting or denying the allegations, Blum consented to the described sanctions and to the entry of findings that, acting on behalf of a member firm, he utilized the instrumentalities of interstate commerce to conduct a securities business while failing to maintain its minimum required net capital.

Blum's suspension began February 18, 2003, and will conclude May 17, 2003. (NASD Case #C9B020087)

William Lawrence Boettcher (CRD #24768, Registered Representative, Walworth, Wisconsin) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 30 days. The fine must be paid before Boettcher

reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Boettcher consented to the described sanctions and to the entry of findings that he failed to disclose material facts on his Form U-4.

Boettcher's suspension began February 18, 2003, and will conclude at the close of business March 19, 2003. (NASD Case #C8A020094)

Sarah L. Colbert (CRD #4152203, Associated Person, Addison, Texas) submitted an Offer of Settlement in which she was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Colbert consented to the described sanction and to the entry of findings that she wrote a personal check in the amount of \$800 in payment of her monthly rent that was subsequently returned for insufficient funds and was advised by her landlord that she would be subject to a daily late fee unless she could prove that her check was returned as a result of a bank error. The findings stated that Colbert, in order to avoid the late penalty, obtained blank stationery from her member firm, composed a letter stating the reason her check was returned was due to a bank error, forged the name of a former bank officer on the letter knowing that the officer was no longer with the firm, and sent or gave the letter to her landlord. (NASD Case #C06020016)

Thomas John DeSimone (CRD #2228767, Registered Representative, Staten Island, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, DeSimone consented to the described sanction and to the entry of findings that he willfully failed to amend, or to amend timely, his Form U-4 to disclose material information. (NASD Case #C10020133)

Frank Thomas Devine (CRD #2035363, Registered Representative, Oswego, Illinois) was fined \$34,825.42, suspended from association with any NASD member in any capacity for 90 days, and required to requalify by exam as an investment company and variable contracts products representative. The SEC affirmed the sanctions following appeal of a NAC decision. The sanctions were based on findings that Devine engaged in private securities transactions without providing prior written notice to, or receiving written permission from, his member firm.

Devine's suspension began February 18, 2003, and will conclude May 18, 2003. (NASD Case #C8A990026)

Roy Grant Dillabaugh (CRD #842429, Registered Representative, Dayton, Ohio) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Dillabaugh consented to the described sanction and to the entry of findings that he received \$5,000 from public customers to purchase a

“Certificate of Deposit Note” that was not a legitimate investment vehicle. The findings also stated that he failed to invest their funds, created a “Certificate of Deposit Note” to mislead the customers into believing that he was selling them a certificate of deposit, and used the customer funds for personal gain. (NASD Case #C8B020029)

Robert Anthony DiMinico (CRD #1339697, Registered Principal, Los Angeles, California) was barred from association with any NASD member in any capacity. The sanction was based on findings that DiMinico bid for, purchased, and induced others to purchase warrants while engaged in a secondary distribution of the warrants. The findings also stated that DiMinico failed to file, or to have his member firm file, with NASD certain information and documents regarding the proposed terms of a secondary distribution of warrants, and that his firm, through DiMinico, received underwriting compensation that was unfair and unreasonable. NASD also found that DiMinico improperly cancelled retail customers’ purchases of shares of common stock while the shares remained available in the aftermarket following the IPO. (NASD Case #CAF000027)

Stephanie Ann Dixon (CRD #4217627, Associated Person, Tempe, Arizona) was fined \$5,000, suspended from association with any NASD member in any capacity for six months, and required to complete the Continuing Education Regulatory Element within one year following any securities industry registration. The fine must be paid before Dixon reassociates with any NASD member. The sanctions were based on findings that Dixon provided a false response on a Form U-4 and failed to respond in a timely manner to NASD requests for information.

Dixon’s suspension began January 6, 2003, and will conclude July 5, 2003. (NASD Case #C3A020020)

Joseph Charles Favata, Sr. (CRD #2254467, Registered Representative, Albrightsville, Pennsylvania) was barred from association with any NASD member in any capacity. The sanction was based on findings that Favata failed to respond to NASD requests for information. Favata also engaged in outside business activities and failed to give prompt written notice to his member firm. (NASD Case #C9A020035)

John Joseph Fisher (CRD #208642, Registered Representative, Wantagh, New York) submitted an Offer of Settlement in which he was fined \$6,950, suspended from association with any NASD member in any capacity for 30 days, and required to pay \$8,050 in restitution to public customers. Without admitting or denying the allegations, Fisher consented to the described sanctions and to the entry of findings that he received commissions as the introducing broker based on the activity in a public customer’s account that resulted in the customer’s account being turned over 783 times on an annualized basis, and the cost/equity ratio was 100 percent, which constitutes churning. The findings also stated that Fisher caused a public customer to sign margin guarantee agreements

guaranteeing the margin accounts for five other customers at his member firm that were not reasonable in light of the customer’s age, mental and physical condition, financial situation, and lack of investment sophistication.

Fisher’s suspension began February 3, 2003, and will conclude at the close of business March 4, 2003. (NASD Case #C3A010036)

William Henry Gehron, III (CRD #219307, Registered Representative, Williamsport, Pennsylvania) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Gehron consented to the described sanction and to the entry of findings that he received a \$77,875 check from a public customer to purchase securities, negotiated the check by endorsing it, and deposited it into his personal bank account. The findings also stated that Gehron issued a \$58,000 check to the order of the public customer, caused the funds to be applied to the purchase of securities for the customer, and retained the \$19,875 balance for his personal purposes until he later paid over the funds to the member firm with which he was then associated. (NASD Case #C9A020053)

Michael Edward Golden (CRD #224128, Registered Principal, Boca Raton, Florida) submitted an Offer of Settlement in which he was fined \$20,000 and suspended from association with any NASD member in any principal or supervisory capacity for two months. Without admitting or denying the allegations, Golden consented to the described sanctions and to the entry of findings that he permitted an individual to hold the position of Director of Investment Banking and to be identified as his member firm’s principal responsible for underwriting, investment banking, and due diligence and to engage in the conduct of related activities notwithstanding that he was not registered as a principal. The findings also stated that Golden failed to take actions or measures that were necessary, reasonable, and adequate to preclude the individual from performing functions and engaging in conduct requiring registration as a principal until he was properly registered.

NASD also found that Golden failed to detect and prevent his member firm’s submission of Free-Riding Questionnaires to NASD that were materially false, misleading, and/or inaccurate in its participation in offerings that were hot issues. In addition, NASD found that Golden effected purchases of hot issues in his personal account, accounts in which he had a beneficial interest, and the account of an investment partnership for which he was the representative in contravention of NASD’s “Free-Riding and Withholding” Interpretation. Moreover, NASD found that Golden failed to ensure that his member firm established and maintained a supervisory system that designated an appropriately registered principal with authority to carry out his firm’s supervisory responsibilities for its underwriting and investment banking business. Furthermore,

Golden, directly or indirectly, failed to ensure that his member firm established, maintained, and enforced written policies and supervisory procedures reasonably designed to achieve compliance with applicable securities laws, regulations, and NASD rules.

Golden's suspension began February 3, 2003, and will conclude at the close of business April 2, 2003. **(NASD Case #C9A020027)**

Bradley Allen Hafner (CRD #2927378, Registered Representative, Granger, Indiana) submitted an Offer of Settlement in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for six months. Without admitting or denying the allegations, Hafner consented to the described sanctions and to the entry of findings that he willfully failed to disclose a material fact on his Form U-4. The findings also stated that Hafner willfully failed to amend, or cause to have amended, his Form U-4 while he was registered with a member firm to disclose a material fact.

Hafner's suspension began February 18, 2003, and will conclude August 17, 2003. **(NASD Case #C8A020031)**

Dawn Sylvette Harper (CRD #4382289, Registered Representative, Mesquite, Texas) was barred from association with any NASD member in any capacity. The sanction was based on findings that Harper failed to respond to NASD requests for information. Harper also failed to disclose a material fact on her Form U-4. **(NASD Case #C05020023)**

David Alan Haugk (CRD #4117538, Associated Person, Beaverton, Oregon) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Haugk consented to the described sanction and to the entry of findings that he placed duplicate shares of common stock inadvertently delivered to his member firm by a transfer agent into an account that he owned or controlled, without the knowledge or consent of the firm or the transfer agent. **(NASD Case #C3B020022)**

Todd William Hawley (CRD #1988486, Registered Representative, McLean, Virginia) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$25,000 and suspended from association with any NASD member in any capacity for six months. The fine must be paid before Hawley reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Hawley consented to the described sanctions and to the entry of findings that he had ownership and control of two accounts and knowingly and intentionally entered pairs of offsetting orders for NASDAQ securities with identical prices and quantities into the Island Electronic Communication Network (ISLD). The findings also stated that the execution of the matched, offsetting orders resulted in the sale of securities from Hawley's trading account

and the purchase of the same securities by his IRA account and then the repurchase of those same securities by his trading account from his IRA account. NASD determined that the repurchase by his trading account from his IRA account occurred at higher prices than the IRA account originally paid for the securities. In addition, NASD found that as result of this trading, Hawley's trading account realized losses and his IRA account realized gains.

Hawley's suspension began February 18, 2003, and will conclude August 17, 2003. **(NASD Case #CMS020239)**

Alan Jay Huber, Jr. (CRD #1593345, Registered Representative, Wilton, Connecticut) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$7,500 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Huber consented to the described sanctions and to the entry of findings that he coordinated prices, trades, and trade reports in connection with the sale of a common stock with the intent to purchase the same shares from a third party. NASD also found that Huber was discharged from his member firm for violating firm policy and procedures in connection with the sells.

Huber's suspension began February 18, 2003, and will conclude at the close of business March 3, 2003. **(NASD Case #CMS020265)**

Darius Darnell Isabell (CRD #4344819, Associated Person, New Brighton, Minnesota) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for one year. The fine must be paid before Isabell reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Isabell consented to the described sanctions and to the entry of findings that he willfully failed to disclose a material fact on his Form U-4.

Isabell's suspension began February 3, 2003, and will conclude at the close of business February 2, 2004. **(NASD Case #C04020046)**

Theodora Kenneybrew (CRD #2660317, Registered Representative, Chino, California) was barred from association with any NASD member in any capacity. The sanction was based on findings that Kenneybrew converted and misused funds belonging to public customers in that she received \$75,474.73 in checks for investment purposes; failed and neglected to invest the funds as instructed; and instead, without the knowledge or consent of the customers, endorsed and deposited the checks into a bank account over which she had control and used \$62,474.73 of the funds for her own personal benefit or for some purpose other than the benefit of the customers. NASD also found that Kenneybrew, without her member firm's knowledge or consent, transferred \$10,200 from

a customer's retirement account to the customer's cash management account; and authored and signed, under the name of a fictitious supervisor, a letter on firm letterhead, through which she misrepresented to a customer that a back-office error had resulted in her deposit being credited to the wrong account and that the error was being corrected. (NASD Case #C02020041)

Alton King, Jr. (CRD #811008, Registered Representative, Longmeadow, Massachusetts) submitted an Offer of Settlement in which he was suspended from association with any NASD member in any capacity for six months. In light of the financial status of King, no monetary sanction has been imposed. Without admitting or denying the allegations, King consented to the described sanctions and to the entry of findings that he did not provide his member firm with prompt written notice that he had undertaken a business activity with another firm wherein he received compensation.

King's suspension began February 18, 2003, and will conclude August 17, 2003. (NASD Case #C11020044)

Sundarajan Krishnaswamy (CRD #3167021, Registered Representative, Piscataway, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$2,500 and suspended from association with any NASD member in any capacity for 10 business days. The fine must be paid before Krishnaswamy reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Krishnaswamy consented to the described sanctions and to the entry of findings that he gave \$180 to a public customer to settle the customer's complaint concerning commissions charged on a municipal bond transaction, without the knowledge or consent of his member firm.

Krishnaswamy's suspension began February 3, 2003, and will conclude at the close of business February 14, 2003. (NASD Case #C9B020093)

Jon Kwan Lee (CRD #2538075, Registered Principal, Bayside, New York) was barred from association with any NASD member in any capacity. The sanction was based on findings that Lee interfered with customer account transfer requests. (NASD Case #C3A020032)

Eric Rau Lupo (CRD #2646738, Registered Supervisor, New York, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$20,000 and suspended from association with any NASD member in any capacity for one year. The fine must be paid before Lupo reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Lupo consented to the described sanctions and to the entry of findings that he effected transactions in the account of a public customer without the

customer's prior knowledge, authorization, or consent. The findings also stated that Lupo induced a public customer to purchase shares of a NASDAQ security by promising to place a stop loss order on the shares purchased and failed to do so, resulting in an approximate loss of \$58,825 to the customer. NASD also found that Lupo, while registered with a member firm, sent letters to a public customer concerning his failure to place a stop loss order in the customer's account, one of which was on firm stationery, without the firm's prior approval, thus preventing the firm from discharging its obligation to review outgoing correspondence of its registered representatives with the public relating to the firm's securities business.

Lupo's suspension began January 21, 2003, and will conclude at the close of business January 20, 2004. (NASD Case #C10020128)

Daniel Dwight Manoff (CRD #1720001, Registered Representative, Poolesville, Maryland) was barred from association with any NASD member in any capacity. The SEC affirmed the decision following the appeal of the NAC decision. The sanction was based on findings that Manoff made unauthorized use of a co-worker's credit card numbers. (NASD Case #C9A990007)

Heriberto Marrero (CRD #1696583, Registered Representative, Fort Lauderdale, Florida) submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Marrero consented to the described sanction and to the entry of findings that he converted \$44,093.35 from the bank accounts of public customers without their authorization to his own use by preparing debit and credit memos containing the forged signatures of the customers. The findings also stated that Marrero failed to respond to NASD requests for information. (NASD Case #C07020086)

Taunya Patrice McGee (CRD #4381115, Registered Representative, Upper Marlboro, Maryland) submitted a Letter of Acceptance, Waiver, and Consent in which she was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, McGee consented to the described sanction and to the entry of findings that she made multiple unauthorized withdrawals totaling \$4,380 from a checking account and/or a savings account owned by a customer and used the funds for her own benefit. The findings also stated that McGee submitted loan applications for \$6,200 in the names of customers without their knowledge or consent, caused the loan proceeds to be paid to her, and used the funds for her own benefit. NASD also found that McGee failed to respond to NASD requests for information and documents. (NASD Case #C9A020056)

Samuel Earl Miller, II (CRD #2479590, Registered Representative, Louisville, Kentucky) was barred from association with any NASD member in any capacity. The sanction

was based on findings that Miller received \$1,000 from a public customer for investment purposes, failed and neglected to remit the funds to his member firm, and failed to invest the funds as instructed. NASD also found that Miller created and sent to a public customer a false account statement reflecting a fictitious mutual fund purchase in the customer's account. In addition, Miller failed to respond to NASD requests for information. (NASD Case #C05020042)

Peter J. Morena (CRD #4383972, Associated Person, Fairview Heights, Illinois) was barred from association with any NASD member in any capacity. The sanction was based on findings that Morena failed to respond to NASD requests for information. In addition, Morena willfully failed to disclose material facts on his Form U-4. (NASD Case #C8A020025)

Douglas Paul Nichols (CRD #4141283, Registered Representative, Broomfield, Colorado) submitted an Offer of Settlement in which he was suspended from association with any NASD member in any capacity for six months. In light of the financial status of Nichols, no monetary sanction has been imposed. Without admitting or denying the allegations, Nichols consented to the described sanction and to the entry of findings that he willfully failed to disclose material facts on his Form U-4.

Nichols' suspension began February 3, 2003, and will conclude August 3, 2003. (NASD Case #C3A020046)

Mark Douglas Nienhueser (CRD #2343074, Registered Representative, Jefferson City, Missouri) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000 and suspended from association with any NASD member in any capacity for 10 business days. The fine must be paid before Nienhueser reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Nienhueser consented to the described sanctions and to the entry of findings that he engaged in outside business activities and accepted compensation while failing to provide prompt written notice to his member firm of such activities.

Nienhueser's suspension began February 3, 2003, and concluded at the close of business February 14, 2003. (NASD Case #C04030001)

Roy Robert Peachey (CRD #2283766, Registered Representative, Belleville, Pennsylvania) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity and ordered to disgorge \$50,000 in commissions in partial restitution to public customers. Restitution must be paid before Peachey requests relief from any statutory disqualification. Without admitting or denying the allegations, Peachey consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without prior written notice to, or approval from, his member firm. (NASD Case #C9A020054)

Bruce Alan Pivar (CRD #1231443, Registered Principal, Highland Park, Illinois) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$10,000, suspended from association with any NASD member in any capacity for 10 business days, and barred from association with any NASD member in a principal or supervisory capacity. Without admitting or denying the allegations, Pivar consented to the described sanctions and to the entry of findings that a registered representative tendered to Pivar personal checks and asked Pivar for permission to effect transactions in Pivar's account. The findings stated that Pivar agreed and the checks were deposited in Pivar's personal brokerage account. NASD found that the representative then directed Pivar to buy and sell options in his account for the representative's benefit using the funds. In addition, NASD found that Pivar placed trades with the funds in his personal account solely on behalf of the representative, including the sale of uncovered options. Furthermore, the findings stated that Pivar knew or should have known that the representative was restricted by his firm from effecting uncovered options transactions.

Pivar's suspension began February 18, 2003, and will conclude at the close of business March 3, 2003. (NASD Case #C8A030002)

Suzanne Renee Preuss (CRD #2680193, Registered Principal, Plano, Texas) was barred from association with any NASD member in any capacity. The sanction was based on findings that Preuss fraudulently issued firm checks to herself by forging the signature of the firm's president and then cashed the checks and applied the proceeds to her own use and benefit. NASD also found that Preuss failed to respond to an NASD request to appear and give testimony in an on-the-record interview. (NASD Case #C06020008)

Elizabeth Virginia Revelle (CRD #2496718, Registered Representative, Mt. Freedom, New Jersey) was barred from association with any NASD member in any capacity. The sanction was based on findings that Revelle failed to respond to NASD requests for information. In addition, Revelle failed to return a computer to her former member firm upon demand. (NASD Case #C9B020068)

Vincent Ribortone (CRD #2614091, Registered Representative, Freeport, New York) submitted an Offer of Settlement in which he was fined \$7,382.97, including disgorgement of commissions received of \$4,882.97, suspended from association with any NASD member in any capacity for six months, required to requalify in all capacities for which registration is sought, and required to pay \$14,606.97 in restitution to public customers. The fine and restitution amounts must be paid before Ribortone reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Ribortone consented to the described

sanctions and to the entry of findings that he entered unauthorized transactions in public customers' accounts. The findings also stated that Ribortone made baseless price predictions concerning the future performance of a pending IPO.

Ribortone's suspension began February 3, 2003, and will conclude August 2, 2003. (NASD Case #C3A020044)

Michelle Marie Rispole (CRD #4427835, Associated Person, Quincy, Massachusetts) was barred from association with any NASD member in any capacity. The sanction was based on findings that Rispole willfully failed to disclose a material fact on her Form U-4. The findings also stated that Rispole failed several times to respond to NASD requests for information. (NASD Case #C11020032)

James Theodore Robinson (CRD #4337581, Associated Person, Rockford, Illinois) submitted an Offer of Settlement in which he was suspended from association with any NASD member in any capacity for nine months. In light of the financial status of Robinson, no monetary sanctions have been imposed. Without admitting or denying the allegations, Robinson consented to the described sanction and to the entry of findings that he failed to disclose material facts on his Form U-4. The findings also stated that Robinson failed to respond to NASD requests for information.

Robinson's suspension began February 3, 2003, and will conclude November 2, 2003. (NASD Case #C04020019)

David Rogers (CRD #4043357, Registered Representative, Scotts Valley, California) submitted a Letter of Acceptance, Waiver, and Consent in which he was censured, fined \$7,500, and suspended from association with any NASD member in any capacity for 120 days. The fine must be paid before Rogers reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Rogers consented to the described sanctions and to the entry of findings that, without the customer's knowledge or consent, he signed the name of a public customer to a letter of authorization that purported to authorize the transfer of securities from another firm to Roger's firm and caused the letter of authorization to be submitted to the transfer agent.

Rogers' suspension began January 21, 2003, and will conclude at the close of business May 20, 2003. (NASD Case #C01020026)

Patrick Alan Sanders (CRD #2784897, Registered Representative, Bismarck, North Dakota) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Sanders consented to the described sanction and to the entry of findings that he willfully failed to disclose a material fact on his Form

U-4. The findings also stated that Sanders failed to respond to NASD requests for information. (NASD Case #C04020044)

Jamie K. C. Scher (CRD #2839788, Registered Representative, Woodbury, New York) submitted an Offer of Settlement in which she was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Scher consented to the described sanction and to the entry of findings that she failed to provide accurate, non-deceptive, and/or complete statements during an NASD on-the-record interview. (NASD Case #C10990158)

Carl Eugene Scipione (CRD #3000672, Registered Representative, Sea Girt, New Jersey) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$15,000, suspended from association with any NASD member in a principal capacity for two months, and required to requalify by exam as a financial and operations principal within 90 days. The fine must be paid before Scipione reassociates with any NASD member following the suspension or before requesting relief from any statutory disqualification. Without admitting or denying the allegations, Scipione consented to the described sanctions and to the entry of findings that, acting on behalf of a member firm, he utilized the instrumentalities of interstate commerce to conduct a securities business while failing to maintain the firm's minimum required net capital.

Scipione's suspension began January 6, 2003, and will conclude at the close of business March 5, 2003. (NASD Case #C9B020086)

Andrew Sirico (CRD #1848034, Registered Principal, Bayport, New York) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for three months. Without admitting or denying the allegations, Sirico consented to the described sanctions and to the entry of findings that he settled a public customer's written complaint alleging sales practice violations by paying the customer \$6,000 without informing and obtaining authorization from his member firm.

Sirico's suspension began January 6, 2003, and will conclude April 5, 2003. (NASD Case #CLI020012)

Richard Allen Sitomer (CRD #1995999, Registered Principal, New York, New York) submitted an Offer of Settlement in which he was barred from association with any NASD member in any capacity and ordered to pay \$4,565.30, plus interest, in restitution to public customers. Satisfactory proof of payment of the restitution must be made before Sitomer reassociates with any NASD member. Without admitting or denying the allegations, Sitomer consented to the described sanctions and to the entry of findings that, acting on behalf of his member firm, he employed in various capacities and entered into a consulting agreement with a statutorily disqualified person. The findings also stated that Sitomer executed unauthorized transactions in

the accounts of public customers without the customers' prior knowledge, authorization, or consent. In addition, NASD found that Sitomer failed to take appropriate steps to detect and prevent the conduct giving rise to claims and/or complaints alleging unauthorized transactions involving an employee. (NASD Case #C04020030)

Douglas Richard Stewart (CRD #3181828, Registered Representative, West St. Paul, Minnesota) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Stewart consented to the described sanction and to the entry of findings that he obtained a \$2,200 unused draft authorization check for the securities account of a public customer, and without the knowledge or consent of the customer, converted the funds to his own use and benefit by making the check payable to himself, endorsing the check, and depositing it into his personal bank account. The findings also stated that Stewart failed to respond to NASD requests for information. (NASD Case #C04020043)

David Earl Sullivan (CRD #2796365, Registered Representative, Boca Raton, Florida) was barred from association with any NASD member in any capacity. The sanction was based on findings that Sullivan stole a blank check belonging to a former member firm; made the check payable to himself for \$800 without the firm's knowledge, authorization, or consent; and forged the signature of the firm's managing partner on the check. The findings also stated that Sullivan endorsed and cashed the check, thereby converting the \$800. (NASD Case #C10020059)

Richard Scott Taylor (CRD #1558263, Registered Representative, Mitchellville, Maryland) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity and ordered to disgorge \$250,000 in commissions in partial restitution to public customers. Restitution must be paid before Taylor requests relief from any statutory disqualification. Without admitting or denying the allegations, Taylor consented to the described sanctions and to the entry of findings that he engaged in private securities transactions without prior written notice to, or approval from, his member firm. (NASD Case #C9A020055)

Patrick Allen Thomas (CRD #1668667, Registered Representative, Huntington Beach, California) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Thomas consented to the described sanction and to the entry of findings that he participated in private securities transactions without providing prior written or oral notification to, and receiving approval from, his member firm. (NASD Case #C02020058)

Paul J. Thompson (CRD #3116125, Registered Representative, Bayfield, Colorado) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$5,000 and suspended from association with any NASD member in any capacity for 30 days. Without admitting or denying the allegations, Thompson consented to the described sanctions and to the entry of findings that he caused the purchase of shares of a mutual fund offered by his member firm in the joint securities accounts of public customers without authorization by the customers.

Thompson's suspension began February 3, 2003, and will conclude at the close of business March 4, 2003. (NASD Case #C3A020055)

Kenneth Chuan Wang (CRD #3125876, Registered Representative, Old Greenwich, Connecticut) submitted a Letter of Acceptance, Waiver, and Consent in which he was fined \$7,500 and suspended from association with any NASD member in any capacity for 10 business days. Without admitting or denying the allegations, Wang consented to the described sanctions and to the entry of findings that he coordinated prices, trades, and trade reports in connection with the sell of a common stock with the intent to purchase the same shares from a third party. NASD also found that Wang was permitted to resign from his member firm in connection with the sells.

Wang's suspension began February 18, 2003, and will conclude at the close of business March 3, 2003. (NASD Case #CMS020264)

John George Widmer (CRD #1913061, Registered Representative, Pagosa Springs, Colorado) submitted a Letter of Acceptance, Waiver, and Consent in which he was barred from association with any NASD member in any capacity. Without admitting or denying the allegations, Widmer consented to the described sanction and to the entry of findings that he converted \$161,000 from a public customer's account maintained at his member firm for his own use and benefit without the customer's prior knowledge, authorization, or consent. (NASD Case #C3A020056)

Individual Fined

Coley James Neel (CRD #2805737, Registered Principal, Chicago, Illinois) submitted a Letter of Acceptance, Waiver, and Consent in which he was censured; fined \$100,000; required to pay \$30,375, plus interest, in disgorgement; and required to requalify by exam as a general securities representative, registered principal, and equity trader with NASD within 90 days. Without admitting or denying the allegations, Neel consented to the described sanctions and to the entry of findings that he failed, in transactions for or with a customer, to use reasonable diligence to ascertain the best inter-dealer

market, and to buy or sell in such market so that the resultant price to a customer was as favorable as possible under prevailing market conditions. (NASD Case #CMS020246)

Decisions Issued

The following decisions have been issued by the DBCC or the Office of Hearing Officers and have been appealed to or called for review by the NAC as of January 3, 2003. The findings and sanctions imposed in the decisions may be increased, decreased, modified, or reversed by the NAC. Initial decisions whose time for appeal has not yet expired will be reported in the next *Notices to Members*.

Chris Dinh Hartley (CRD #1799834, Registered Representative, San Jose, California) was fined \$7,500 and suspended from association with any NASD member in any capacity for 30 days. The sanctions were based on findings that Hartley participated in private securities transactions and failed to give prior written notice to, and receive written approval from, his member firm prior to engaging in such activities.

This case has been called for review by the NAC, and the sanctions are not in effect pending consideration of the review. (NASD Case #C01010009)

Vincent Joseph Puma (CRD #2358356, Registered Principal, Marlboro, New Jersey) was fined \$10,000 and suspended from association with any NASD member in any capacity for 10 business days. The sanctions were based on findings that Puma effected an unauthorized transaction in the account of a public customer.

Puma has appealed this decision to the NAC, and NASD's Department of Enforcement has cross-appealed the decision to the NAC. The sanctions are not in effect pending consideration of the appeal. (NASD Case #C10000122)

Complaints Filed

The following complaints were issued by NASD. Issuance of a disciplinary complaint represents the initiation of a formal proceeding by NASD in which findings as to the allegations in the complaint have not been made, and does not represent a decision as to any of the allegations contained in the complaint. Because these complaints are unadjudicated, you may wish to contact the respondents before drawing any conclusions regarding the allegations in the complaint.

John Thomas Archer (CRD #6890, Registered Representative, Escondido, California), Alvin Waino Gebhart, Jr. (CRD #1005905, Registered Principal, Fallbrook, California), and Donna Traina Gebhart (CRD #2708528, Registered Principal, Fallbrook, California) were named as

respondents in an NASD complaint alleging that they, directly or indirectly, made use of the means or instrumentalities of transportation or communication in interstate commerce or of the mails to offer to sell securities in the form of promissory notes; or directly or indirectly carried or caused such securities to be carried through the mails or in interstate commerce for the purpose of sale or for delivery after sale of the securities. The complaint also alleges that Archer, A. Gebhart, and D. Gebhart, directly or indirectly, in connection with the purchase or sale of securities, by the use of the means or instrumentalities of interstate commerce or of the mails, employed devices, schemes, or artifices to defraud; made untrue statements of material fact or omitted to state material facts necessary in order to make the statements, in light of the circumstances under which they were made, not misleading; and engaged in acts, practices, or courses of business which operated, or would operate, as a fraud or deceit upon purchasers or prospective purchasers in contravention of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder. The complaint also alleges that Archer, A. Gebhart, and D. Gebhart participated in private securities transactions without providing prior written notification to, and receiving approval from, their member firms. The complaint further alleges that Archer acted as a broker without the benefit of registration as required by Section 15 of the Exchange Act. (NASD Case #C02020057)

Stanley Crawford Armour (CRD #2729805, Registered Representative, Pearl River, New York) was named as a respondent in a complaint alleging that he engaged in a securities transaction in the account of a public customer without the customer's knowledge or consent, and withdrew approximately \$72,500 from the customer's savings account without the customer's knowledge or consent to pay for the unauthorized securities transaction. The complaint also alleges that Armour forged the customer's signature on a customer acknowledgement form without the customer's knowledge or consent. (NASD Case #C9B020091)

Erik Antony Baron (CRD #2450380, Registered Representative, Brookfield, Connecticut) was named as a respondent in an NASD complaint alleging that he effected a transaction in the account of a public customer without the customer's prior knowledge, authorization, or consent. The complaint also alleges that Baron sent an electronic correspondence to a public customer without the prior knowledge or approval of his member firm, thereby preventing his firm from discharging its supervisory obligation to review outgoing correspondence of its registered representatives with the public relating to its securities business. In addition, the complaint alleges that Baron made a material misrepresentation in the electronic communication to a public customer. Moreover, the complaint alleges that Baron requested his member firm's clearing firm to grant additional time to a public customer to pay for a purchase of securities pursuant to Regulation T of the Interpretation of the Board of Governors of the Federal Reserve

System and failed to exercise good faith in making this extension request on behalf of the customer. Furthermore, the complaint alleges that Baron falsely testified during an NASD on-the-record interview. (NASD Case #C10020126)

Brookes McIntosh Bendetsen (CRD #1374304, Registered Principal, San Mateo, California) was named as a respondent in an NASD complaint alleging that he signed the name of a public customer to a margin agreement for the account of the customer's trust account. The complaint alleges that Bendetsen recommended to a public customer and effected in the customer's account short sales of shares and purchases of shares of stock, and the writing of a series of purchases and sales of option contracts, without having a reasonable basis for believing that the transactions were suitable for the customer based on the facts disclosed by the customer as to other security holdings, financial situation, and needs. The complaint also alleges that Bendetsen created and provided to a public customer false account statements relating to the customer's account at his member firm. (NASD Case #C01020025)

Douglas Conant Day (CRD #1131612, Registered Principal, San Jose, California) was named as a respondent in an NASD complaint alleging that he recommended to public customers the purchase of an investment contract without having reasonable grounds for believing that the recommendation was suitable for the customers based upon the facts disclosed by the customers as to their other security holdings and their financial situation and needs. The complaint also alleges that Day refused to respond to NASD requests for information and documents, and provided false information to NASD during the course of an investigation. (NASD Case #C01020024)

Darrell Todd Gibson (CRD #2833174, Registered Representative, McGregor, Texas) was named as a respondent in an NASD complaint alleging that he engaged in a private securities transaction without providing prior written notice to, and receiving approval from, his member firm. The complaint alleges that Gibson recommended to public customers the purchase of a promissory note without having a reasonable basis based on the customers' financial status, objectives, and needs. The complaint also alleges that Gibson sold securities to customers without being properly registered with NASD, and failed to respond to NASD requests for information. (NASD Case #C06020024)

Hornblower and Weeks, Inc. (CRD #4683, New York, New York) and Paul Eric Toboada (CRD #2033981, Registered Representative, Wantagh, New York) were named as respondents in an NASD complaint alleging that Toboada wrote a research report issued by the firm that made exaggerated, unwarranted, and misleading statements and claims about a company; failed to disclose material facts; and failed to disclose important risks associated with the company. The complaint also alleges that the firm and Toboada issued the report in violation of the terms of an NASD Letter of Acceptance, Waiver, and

Consent in which the firm was required to hire an independent consultant to review the adequacy of their supervisory procedures relating to the issuance of research reports before issuing a research report, and in which the firm was required to notify NASD before issuing a research report. (NASD Case #CAF020022)

Daniel Eric Kelsey (CRD #3031423, Registered Representative, Grand Rapids, Michigan) was named as a respondent in an NASD complaint alleging that Kelsey, by the use of instrumentalities of interstate commerce or the mails, intentionally or recklessly employed devices to defraud customers by making untrue statements of material facts and/or omitting to state material facts necessary to make the statements made by Kelsey, in light of the circumstances in which they were made, not misleading in connection with the purchase by customers of variable life insurance policies that Kelsey sold to the customers. The complaint also alleges that Kelsey willfully failed to update his Form U-4 with material facts, and that he willfully and affirmatively misrepresented material information on his Form U-4. In addition, the complaint alleges that Kelsey willfully failed to disclose material facts on his Form U-4. (NASD Case #C8A020088)

Kelli O'Brien Milz (CRD #2956890, Registered Representative, Marietta, Georgia) was named as a respondent in an NASD complaint alleging that she aided and abetted the operation of an unregistered broker/dealer by permitting it to run its business through the branch office of a member firm that she managed by causing new accounts to be opened for customers of the unregistered broker/dealer at her member firm with herself listed as the registered representative. The complaint also alleges that Milz paid, or caused to be paid, transaction-based compensation to the unregistered broker/dealer, and that she created a customer account system that tracked the commissions due each office of the unregistered broker. In addition, the complaint alleges that Milz assisted in the preparation of Web sites for the unregistered broker/dealer that promoted its unregistered brokerage services, and provided access to new account forms that created the false and misleading impression that it offered brokerage services. (NASD Case #CAF020067)

Terry Lamar Obee (CRD #2326611, Registered Representative, Richton Park, Illinois) was named as a respondent in an NASD complaint in which he received \$125,000 from a public customer for investments in real estate ventures, but then transferred the funds to his personal brokerage account at his member firm and converted the funds to buy and sell options for his own account without the knowledge or consent of the customer. The complaint alleges that Obee's member firm placed a restriction on options trading in his brokerage account at the firm to permit option writing only and, despite the restriction, he tendered \$40,000 to his supervisor at the firm to be deposited into the supervisor's brokerage account and directed options transactions in the

account, circumventing restrictions placed on his personal brokerage account. The complaint also alleges that Obee failed to respond to NASD requests for information. (NASD Case #C8A020092)

Aurangzeb Rashid Pirzada (CRD #868883, Registered Principal, Los Angeles, California) was named as a respondent in an NASD complaint alleging that he willfully failed to disclose material facts on his Form U-4. The complaint alleges that Pirzada willfully failed to amend his Form U-4 to disclose a material fact. The complaint further alleges that Pirzada, in connection with the sales of securities in a public customer's 401(k) and Individual Retirement Account (IRA) accounts, utilized the instrumentalities of interstate commerce to engage in a device, scheme, and artifice to defraud in that he represented to a public customer that he would manage her funds in a new IRA account, but used the funds to make a clearing deposit for his member firm with another broker/dealer and engaged in day trading through an account captioned "Pasha Research" to pay his own personal expenses. In addition, the complaint alleges that, in connection with the sale of securities to a public customer, Pirzada failed to disclose material facts to the customer. (NASD Case #C01020027)

Joseph John Piscopo (CRD #2221826, Registered Representative, Staten Island, New York) and Peter Laurella (CRD #2386054, Registered Representative, Staten Island, New York) were named as respondents in an NASD complaint alleging that they knowingly and deceptively participated in a scheme pursuant to which they executed securities transactions in the accounts of public customers without their knowledge, authorization, or consent. The complaint also alleges that Piscopo and Laurella, by use of the means and instrumentalities of interstate commerce and of the facilities of national securities exchanges, employed a device, scheme, or artifice to defraud; made untrue statements of material fact; omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and engaged in acts, practices, or a course of business which operated, or could operate, as a fraud or deceit upon persons in connection with the purchase and sale of securities. In addition, the complaint alleges that Piscopo and Laurella failed to respond to NASD requests to appear for an on-the-record interview. (NASD Case #CAF020065)

Kenneth Harold Rodgers (CRD #2694136, Registered Representative, Milltown, New Jersey) was named as a respondent in an NASD complaint alleging that, while exercising effective control over the account of a public customer, he recommended numerous purchase and sale transactions without having reasonable grounds for believing that the transactions were suitable for the customer in view of the size and frequency of the transactions, the nature of the account, and the customer's financial situation and needs. (NASD Case #C9B020088)

Edwardo Xavier Sosa (CRD #2703160, Registered Representative, New York, New York) was named as a respondent in an NASD complaint alleging that he solicited public customers to purchase common stock and warrants, opened brokerage accounts in their names at his member firm, and purchased stock and warrants in the accounts without the customers' authorization. (NASD Case #CAF020071)

John Kevin Toupin (CRD #1777676, Registered Principal, Clayton, Georgia) was named as a respondent in an NASD complaint alleging that he caused a public customer to forward \$300,000 to him to be used to purchase investment company shares, deposited the funds into an account in his name, and failed to invest the funds as directed. The complaint also alleges that Toupin failed to respond to NASD requests for information and documents. (NASD Case #C07030001)

Firm Suspended Pursuant to NASD Rule Series 9510 for Failure to Comply with an Arbitration Award, a Settlement Agreement, or Arbitration Fees

(The date the registration was suspended is included after the entry. If the firm has complied, the listing also includes the date the suspension was lifted.)

Hornblower and Weeks, Inc.
New York, New York
(January 6, 2003)

Individuals Barred Pursuant to NASD Rule 9544 for Failure to Provide Information Requested Under NASD Rule 8210

(The date the bar became effective is listed after the entry.)

Harris, Michael O.
W. Los Angeles, California
(January 3, 2003)

Hernandez, Ulisses R.
Queens, New York
(December 20, 2002)

Kimes, Kody Frederick
Cottage Grove, Oregon
(January 3, 2003)

Lee, Jon Kwan
Bayside, New York
(December 17, 2002)

Merced, Carlos E.
Victorville, California
(December 17, 2002)

Silverberg, Jay Steven
Los Angeles, California
(January 8, 2003)

Stapleton, Bill L.,
Weilerbach, Germany
(December 18, 2002)

Visbal, Michael A.,
Pacific Palisades, California
(December 17, 2002)

Schwartz, Robert A.
Los Angeles, California
(December 30, 2002)

Unger, Oron
Brooklyn, New York
(December 12, 2002)

Vivino, Jr., Anthony E.
Lansdale, Pennsylvania
(December 19, 2002)

Waye, II, Gary C.
Rochester, New York
(December 30, 2002)

Individuals Suspended Pursuant to NASD Rule 9541(b) for Failure to Provide Information Requested under NASD Rule 8210

(The date the suspension began is listed after the entry. If the suspension has been lifted, the date follows the suspension date.)

Cope, Anthony D.
Coraopolis, Pennsylvania
(December 30, 2002)

Cope, Jason
Coraopolis, Pennsylvania
(December 11, 2002)

Harris, James Sheridan
Duncanville, Texas
(December 24, 2002)

Holmes, Leslie R.
Upper Marlboro, Maryland
(December 23, 2002)

Mason, Gregory A.
New York, New York
(December 31, 2002)

Miranda, Peter S.
Highland Park, Illinois
(December 12, 2002)

Reese, Daniel B.
Cleburne, Texas
(January 3, 2003)

Individuals Suspended Pursuant to NASD Rule Series 9510 for Failure to Comply with an Arbitration Award or a Settlement Agreement

(The date the suspension began is listed after the entry. If the suspension has been lifted, the date follows the suspension date.)

Cappetta, Vincent
North Babylon, New York
(January 7, 2003)

Gerson, Glenn H.
West Palm Beach, Florida
(December 17, 2002)

Louis, Andrew S.
San Diego, California
(January 3, 2003–January 13, 2003) [Suspension has been lifted for Louis.]

Individuals Revoked for Failing to Pay Fines and/or Costs in Accordance with NASD Rule 8320

Guirand, Gary
Baldwin, New York
(December 19, 2002)

Johnson, Darryl S.
Prairie View, Texas
(December 19, 2002)

Lanza, Rafael M.
West New York, New Jersey
(December 19, 2002)

NASD Charges Robertson Stephens with Sharing in Millions of Dollars of Customers' Profits in Exchange for "Hot" IPO Shares; Firm to Pay \$28 Million to Settle NASD and SEC Actions

Robertson Stephens, Inc., has been censured and ordered to pay \$28 million for receiving inflated commissions from more than 100 client accounts in exchange for the allocation of "hot" initial public offerings (IPOs) in 1999 and 2000 during the height of the IPO boom. As part of its settlement with NASD and a related case brought by the Securities and Exchange Commission (SEC), Robertson Stephens will pay \$14 million to NASD and \$14 million in the SEC's matter.

Robertson Stephens' wrongful profit sharing took place in the firm's Institutional Sales Department and Financial Services Department. Customers of Institutional Sales shared profits with the firm by paying inflated brokerage commissions on unrelated listed trades. Inflated brokerage commissions were paid on thousands of transactions, mostly on the day of the IPO, or the day before or after the IPO. Hundreds of these trades were executed with commissions at \$1 per share or more, in contrast to the ordinary rate for such transactions: 6 cents per share. Customers also engaged in non-economic trades to share profits with the firm. In these trades, the customer purchased a highly liquid exchange-listed security through the firm, paying an inflated commission, and immediately sold the security at another firm at the ordinary commission rate, often resulting in an immediate loss for the customer. Many of these trades were executed as "market on open" or "market on close" in order to minimize market exposure.

The firm also engaged in unlawful profit sharing with its Financial Services customers through inflated markdowns on the sale of IPO shares back to the firm. These accounts "flipped" their shares back to the firm, and paid the high markdowns even though Robertson Stephens often did not charge any markdown on principal trades.

"Profit sharing with customers in connection with the allocation of IPO shares is a serious violation of NASD rules and severely undermines the integrity of the markets," said Mary L. Schapiro, NASD's Vice Chairman and President, Regulatory Policy & Oversight. "This scheme to inflate firm commissions in return for granting hot IPO allocations corrupts the capital raising process. We will continue to look at activity in this area to ensure that NASD rules are followed and investors are treated fairly."

In 1999 and 2000, Robertson Stephens was the lead manager of more than 75 IPOs, many of which traded in the immediate aftermarket at significant multiples of the IPO offering price—

one as high as 355 percent. NASD found that the firm allocated shares in these IPOs through a syndicate ranking formula weighted in favor of those accounts that generated commissions close in time to the IPO. Customer accounts paid the firm inflated commissions to increase their syndicate rank. The Syndicate Department also had discretion to allocate some IPO shares independent of the syndicate rank and, at times, provided greater allocations to accounts than they otherwise would have received based solely on their rank. NASD found that if certain accounts had not paid inflated commissions, they would not have attained the necessary status according to the syndicate rank formula and Robertson Stephens would not have allocated IPO shares to them. Certain accounts receiving hot IPOs engaged in virtually no other trading through Robertson Stephens other than transactions characterized by inflated commissions paid on the day of an IPO or within a day of the IPO. Other accounts generally paid the firm's normal commission rate of 6 cents per share, and then inflated the commission rate on the day of an IPO or within a day of an IPO. Certain accounts paid more than \$1 million in inflated commissions in return for IPO allocations.

NASD found that in order to obtain or increase their IPO allocations, certain institutional accounts determined a percentage of profits they needed to repay the firm, and certain accounts repaid 25-30 percent of their profits on successful IPO deals. On hot IPO days, many customers would place their orders for trades at the market's opening, but would not ascribe commissions on the trade until later in the day, after the customer determined how much money they made or would make by flipping the IPO.

Certain Robertson Stephens managers were told that the firm was sharing in profits. For example, a senior salesperson wrote to the head of Institutional Sales about an account that requested IPO shares,

"Because of their uncertainty about the level of upside to the deal, rather than commit to a fixed level of incremental commission \$(i.e. \$10,000 per 1,000 shares), [the customer has] committed to do incremental business equal to 30% of their profit.... This is a layup."

As part of its investigation, NASD also found that Robertson Stephens failed to preserve e-mails as required by record-keeping rules. During the course of the investigation into the practices outlined above, NASD requested certain e-mails. At that time, e-mails were retained on back-up tape. However, some time after receiving these requests, Robertson Stephens overwrote a number of the requested tapes, covering an eight-month period, and internal e-mails from those backup tapes were deleted. Such e-mails were possibly both responsive and relevant to the on-going investigation and some of these e-mails could not be reproduced through other means.

NASD found that Robertson Stephens's conduct violated NASD rules:

- ◆ prohibiting member firms from sharing in the profits of client accounts;
- ◆ obligating brokerage firms to adhere to just and equitable principles of trade;
- ◆ requiring information to be filed with NASD's Corporate Finance Department;
- ◆ requiring accurate books and records be maintained by brokerage firms; and
- ◆ requiring an adequate supervisory system.

Robertson Stephens, which is in the process of withdrawing from the securities industry, neither admitted nor denied the allegations but consented to the entry of findings. NASD acknowledges the assistance of the SEC in this matter.